

§218.81

- (i) HF4—an average of 192 hours.
- (ii) [Reserved]
- (6) Active Acoustic Sources Used During Non-Annual Testing:
 - (i) LF5—an average of 240 hours.
 - (ii) MF9—an average of 480 hours.
 - (iii) HF5—an average of 240 hours.
 - (iv) HF6—an average of 720 hours.
 - (v) HF7—an average of 240 hours.
 - (vi) FLS2 and FLS3—an average of 240 hours.
 - (vii) SAS2—an average of 720 hours.
- (7) Explosive Sources Used During Non-Annual Training:
 - (i) E2 (0.26 to 0.5 lbs NEW)—an average of 2.
 - (ii) E4 (2.6 to 5 lbs NEW)—an average of 2.
- (8) Explosive Sources Used During Non-Annual Testing:
 - (i) E1 (0.1 to 0.25 lbs NEW)—an average of 600.
 - (ii) E16 (7,251 to 14,500 lbs NEW)—an average of 12.
 - (iii) E17 (14,501 to 58,000 lbs NEW)—an average of 4.

§218.81 Effective dates and definitions.

(a) Regulations are effective December 3, 2013 and applicable to the Navy November 14, 2013 through November 13, 2018.

(b) The following definitions are utilized in these regulations:

(1) *Uncommon Stranding Event (USE)*—A stranding event that takes place within an OPAREA where a major training event (MTE) occurs and involves any one of the following:

(i) Two or more individuals of any cetacean species (not including mother/calf pairs), unless of species of concern listed in §218.81(b)(1)(ii) found dead or live on shore within a 2-day period and occurring within 30 miles of one another.

(ii) A single individual or mother/calf pair of any of the following marine mammals of concern: beaked whale of any species, *Kogia* spp., Risso's dolphin, melon-headed whale, pilot whale, North Atlantic right whale, humpback whale, sperm whale, blue whale, fin whale, or sei whale.

(iii) A group of two or more cetaceans of any species exhibiting indicators of distress.

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(2) *Shutdown*—The cessation of MFAS/HFAS operation or detonation of explosives within 14 nautical miles of any live, in the water, animal involved in a USE.

§218.82 Permissible methods of taking.

(a) Under Letters of Authorization (LOAs) issued pursuant to §218.87, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals within the area described in §218.80, provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate LOA.

(b) The incidental take of marine mammals under the activities identified in §218.80(c) is limited to the following species, by the identified method of take:

(1) Harassment (Level A and Level B) for all Training and Testing Activities:

(i) Mysticetes:

(A) Blue whale (*Balaenoptera musculus*)—817.

(B) Bryde's whale (*Balaenoptera edeni*)—5,079.

(C) Fin whale (*Balaenoptera physalus*)—25,239.

(D) North Atlantic right whale (*Eubalaena glacialis*)—955.

(E) Humpback whale (*Megaptera novaeangliae*)—9,196.

(F) Minke whale (*Balaenoptera acutorostrata*)—336,623.

(G) Sei whale (*Balaenoptera borealis*)—54,766.

(ii) Odontocetes:

(A) Atlantic spotted dolphin (*Stenella frontalis*)—994,221.

(B) Atlantic white-sided dolphin (*Lagenorhynchus acutus*)—206,144.

(C) Blainville's beaked whale (*Mesoplodon densirostris*)—164,454.

(D) Bottlenose dolphin (*Tursiops truncatus*)—1,570,031.

(E) Clymene dolphin (*Stenella clymene*)—108,199.

(F) Common dolphin (*Delphinus* spp.)—2,562,969.

(G) Cuvier's beaked whale (*Ziphius cavirostris*)—204,945.

(H) False killer whale (*Pseudorca crassidens*)—4,062.

- (I) Fraser's dolphin (*Lagenodelphis hosei*)—11,816.
- (J) Gervais' beaked whale (*Mesoplodon europaeus*)—164,663.
- (K) Harbor porpoise (*Phocoena phocoena*)—11,072,415.
- (L) Killer whale (*Orcinus orca*)—77,448.
- (M) *Kogia* spp.—31,095.
- (N) Melon-headed whale (*Peponocephala electra*)—111,360.
- (O) Northern bottlenose whale (*Hyperoodon ampullatus*)—152,201.
- (P) Pantropical spotted dolphin (*Stenella attenuata*)—393,316.
- (Q) Pilot whale (*Globicephala* spp.)—581,032.
- (R) Pygmy killer whale (*Feresa attenuata*)—8,041.
- (S) Risso's dolphin (*Grampus griseus*)—1,306,404.
- (T) Rough-toothed dolphin (*Steno bredanensis*)—5,911.
- (U) Sowerby's beaked whale (*Mesoplodon bidens*)—63,156.
- (V) Sperm whale (*Physeter macrocephalus*)—82,282.
- (W) Spinner dolphin (*Stenella longirostris*)—115,310.
- (X) Striped dolphin (*Stenella coerulealba*)—1,222,149.
- (Y) True's beaked whale (*Mesoplodon mirus*)—99,123.
- (Z) White-beaked dolphin (*Lagenorhynchus albirostris*)—16,400.
- (iii) Pinnipeds:
 - (A) Gray seal (*Halichoerus grypus*)—14,511.
 - (B) Harbor seal (*Phoca vitulina*)—39,519.
 - (C) Harp seal (*Pagophilus groenlandica*)—16,319.
 - (D) Hooded seal (*Cystophora cristata*)—1,472.
 - (E) Ringed seal (*Pusa hispida*)—1,795.
 - (F) Bearded seal (*Erignathus barbatus*)—161.
- (2) Mortality (or lesser Level A injury) for all Training and Testing Activities:
 - (i) No more than 140 mortalities applicable to any small odontocete species from an impulse source.
 - (ii) No more than 10 beaked whale mortalities (2 per year).
 - (iii) No more than 11 large whale mortalities from vessel strike.

- (iv) No more than 25 mortalities (no more than 20 in any given year) applicable to any small odontocete species from Ship Shock trials.

§ 218.83 Prohibitions.

Notwithstanding takings contemplated in § 218.82 and authorized by an LOA issued under §§ 216.106 of this chapter and 218.87, no person in connection with the activities described in § 218.80 may:

- (a) Take any marine mammal not specified in § 218.82(c);
- (b) Take any marine mammal specified in § 218.82(c) other than by incidental take as specified in § 218.82(c);
- (c) Take a marine mammal specified in § 218.82(c) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or
- (d) Violate, or fail to comply with, the terms, conditions, and requirements of these regulations or an LOA issued under §§ 216.106 of this chapter and 218.87.

§ 218.84 Mitigation.

(a) When conducting training and testing activities, as identified in § 218.80, the mitigation measures contained in the LOA issued under §§ 216.106 and 218.87 must be implemented. These mitigation measures include, but are not limited to:

(1) *Lookouts*. The following are protective measures concerning the use of lookouts.

(i) Lookouts positioned on ships will be dedicated solely to diligent observation of the air and surface of the water. Their observation objectives will include, but are not limited to, detecting the presence of biological resources and recreational or fishing boats, observing mitigation zones, and monitoring for vessel and personnel safety concerns.

(ii) Lookouts positioned in aircraft or on small boats will, to the maximum extent practicable and consistent with aircraft and boat safety and training and testing requirements, comply with the observation objectives described in § 218.84 (a)(1)(i).

(iii) Lookout measures for non-impulsive sound: